

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

HEATHER L. CROW,
Plaintiff,

v.

HOME LOAN CENTER, INC.; et al.,
Defendants.

3:11-cv-0259-LRH-VPC

ORDER

Before the court is defendant Home Loan Center, Inc.'s ("HLC") motion to dismiss. Doc. #5.¹ Plaintiff Heather Crow ("Crow") filed an opposition (Doc. #8) to which HLC replied (Doc. #10).

I. Facts and Procedural History

In January, 2007, Crow refinanced real property through a mortgage note and deed of trust originated by HLC. Eventually, Crow defaulted on the mortgage note and defendants initiated non-judicial foreclosure proceedings.

Subsequently, Crow filed a complaint against defendants alleging nine causes of action: (1) debt collection violations; (2) Nevada Unfair and Deceptive Trade Practices Act, NRS 598.0923; (3) Nevada Unfair Lending Practices Act, NRS 598D.100; (4) breach of the covenant of

¹ Refers to the court's docket number.

1 good faith and fair dealing; (5) NRS 107.080; (6) quiet title; (7) fraud; (8) slander of title; and
 2 (9) abuse of process. Doc. #1, Exhibit B. Thereafter, HLC filed the present motion to dismiss.²
 3 Doc. #5.

4 **II. Legal Standard**

5 Defendant HLC seeks dismissal pursuant to Federal Rule of Civil Procedure 12(b)(6) for
 6 failure to state a claim upon which relief can be granted. To survive a motion to dismiss for failure
 7 to state a claim, a complaint must satisfy the Federal Rule of Civil Procedure 8(a)(2) notice
 8 pleading standard. *See Mendiondo v. Centinela Hosp. Med. Ctr.*, 521 F.3d 1097, 1103 (9th Cir.
 9 2008). That is, a complaint must contain “a short and plain statement of the claim showing that the
 10 pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). The Rule 8(a)(2) pleading standard does not
 11 require detailed factual allegations; however, a pleading that offers “‘labels and conclusions’ or ‘a
 12 formulaic recitation of the elements of a cause of action’” will not suffice. *Ashcroft v. Iqbal*, 129 S.
 13 Ct. 1937, 1949 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

14 Furthermore, Rule 8(a)(2) requires a complaint to “contain sufficient factual matter,
 15 accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Id.* at 1949 (quoting
 16 *Twombly*, 550 U.S. at 570). A claim has facial plausibility when the pleaded factual content allows
 17 the court to draw the reasonable inference, based on the court’s judicial experience and common
 18 sense, that the defendant is liable for the misconduct alleged. *See id.* at 1949-50. “The plausibility
 19 standard is not akin to a probability requirement, but it asks for more than a sheer possibility that a
 20 defendant has acted unlawfully. Where a complaint pleads facts that are merely consistent with a
 21 defendant’s liability, it stops short of the line between possibility and plausibility of entitlement to
 22 relief.” *Id.* at 1949 (internal quotation marks and citation omitted).

23 In reviewing a motion to dismiss, the court accepts the facts alleged in the complaint as

24
 25 ² HLC is not a named defendant as to Crow’s eight cause of action for slander or title or ninth cause
 26 of action for abuse of process. As such, HLC’s motion and this order only address the remaining seven causes
 of action.

1 true. *Id.* However, “bare assertions . . . amount[ing] to nothing more than a formulaic recitation of
2 the elements of a . . . claim . . . are not entitled to an assumption of truth.” *Moss v. U.S. Secret*
3 *Serv.*, 572 F.3d 962, 969 (9th Cir. 2009) (quoting *Iqbal*, 129 S. Ct. at 1951) (brackets in original)
4 (internal quotation marks omitted). The court discounts these allegations because “they do nothing
5 more than state a legal conclusion—even if that conclusion is cast in the form of a factual
6 allegation.” *Id.* (citing *Iqbal*, 129 S. Ct. at 1951.) “In sum, for a complaint to survive a motion to
7 dismiss, the non-conclusory ‘factual content,’ and reasonable inferences from that content, must be
8 plausibly suggestive of a claim entitling the plaintiff to relief.” *Id.*

9 **III. Discussion**

10 **A. Debt Collection Violations**

11 Pursuant to NRS § 649, it is a violation of state law to violate any provision of the federal
12 Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. §§ 1692 et seq. NRS § 649.370. Here,
13 Crow alleges that defendants violated the FDCPA by initiating a non-judicial foreclosure without
14 following the proper procedures for attempting to collect a debt. However, it is undisputed that
15 HLC took no action in initiating the non-judicial foreclosure in this action because its interest in the
16 property was transferred prior to the notice of default. Therefore, the court finds that Crow fails to
17 state a claim against HLC for violation of the FDCPA.

18 **B. Nevada’s Unfair and Deceptive Trade Practices Act**

19 Pursuant to NRS 598.0923 it is a deceptive trade practice to conduct business in the State of
20 Nevada without all required state, county or city licenses. NRS 598.0923(1). Crow alleges that
21 defendants violated the statute by recording the underlying notice of default without having a state
22 business license. However, HLC did not record the notice of default and there are no allegations
23 that it did not have all required licenses at the time it issued the underlying loan. Therefore, the
24 court finds that Crow has failed to state a claim upon which relief can be granted.

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1 **C. Nevada Unfair Lending Practices Act**

2 NRS 598D.100 prohibits lenders from making loans “without determining, using
3 commercially reasonable means or mechanisms, that the borrower has the ability to repay the home
4 loan.” NRS 598D.100(1)(b). However, this suitability language was added in mid-2007 when the
5 statute was amended. Although Crow alleges that HLC violated the present version of the statute,
6 her refinance loan originated January, 2007, prior to the current amendment. Therefore, Crow’s
7 loan cannot have violated the current statutory language requiring a determination that a borrower
8 has the ability to repay the loan.

9 Additionally, Crow’s unfair lending practices claim is barred by the applicable statute of
10 limitations. The statute of limitations on an unfair lending practices claim under NRS 598D is two
11 (2) years. *See* NRS § 11.190(3)(a). Crow refinanced her property in January 2007, and did not file
12 the present action until 2011, over two years after the statute of limitations had expired.
13 Accordingly, the court shall grant HLC’s motion as to this issue.

14 **D. Breach of Good Faith and Fair Dealing**

15 Under Nevada law, “[e]very contract imposes upon each party a duty of good faith
16 and fair dealing in its performance and execution.” *A.C. Shaw Constr. v. Washoe County*, 784
17 P.2d 9, 9 (Nev. 1989) (quoting Restatement (Second) of Contracts § 205). To establish a claim for
18 breach of the implied covenant of good faith and fair dealing, a plaintiff must show that: (1) the
19 plaintiff and defendant were parties to a contract; (2) the defendant owed a duty of good faith and
20 fair dealing to the plaintiff; (3) the defendant breached his duty by performing in a manner
21 unfaithful to the purpose of the contract; and (4) the plaintiff’s justified expectations were denied.
22 *See Perry v. Jordan*, 134 P.3d 698, 702 (Nev. 2006) (citing *Hilton Hotels Corp. v. Butch Lewis*
23 *Prod. Inc.*, 808 P.2d 919, 922-23 (Nev. 1991).

24 Here, Crow alleges that defendants breached the implied covenant because they
25 misrepresented the cost of credit involved in the loan agreement. However, these alleged
26

1 misrepresentations occurred *before* a contract was formed. *See* Doc. #1, Exhibit B. Crow fails to
2 allege any facts to establish a breach of the implied covenants *after* the contract between the parties
3 was formed.

4 **E. NRS 107.080**

5 Crow alleges that defendants violated NRS 107.080 by not complying with the applicable
6 provisions in NRS 107.086 and 107.087 concerning recordation and mailing of the notice of
7 default. However, HLC did not take part in any of the foreclosure proceedings and did not record
8 the underlying notice of default. Therefore, the court finds that Crow fails to state a claim against
9 HLC upon which relief can be granted.

10 **F. Quiet Title**

11 Under Nevada law, a quiet title action may be brought by someone who claims an adverse
12 interest in property. NRS § 40.010. Here, HLC has no interest in the property adverse to Crow's
13 interest. Therefore, Crow has no grounds to quiet title against HLC.

14 **G. Fraud**

15 "In alleging fraud or mistake, a party must state with particularity the circumstances
16 constituting fraud or mistake." FED. R. CIV. P. 9(b). In order to meet the heightened pleading
17 requirements a plaintiff must specify the time, place, and content of the misrepresentation as well
18 as the names of the parties involved. *Kearns v. Ford Motor Co.*, 567 F.3d 1120, 1124 (9th Cir.
19 2009); *see also*, *Yourish v. Cal. Amplifier*, 191 F.3d 983, 993 n.10 (9th Cir. 1999); *Parnes v.*
20 *Gateway 2000*, 122 F.3d 539, 549-50 (8th Cir. 1997) (requiring a plaintiff to allege the requisite
21 who, what, where, when, and how of the misrepresentation).

22 Here, Crow fails to allege anything more than HLC defrauded her during the loan process.
23 There are no allegations of who failed to provide information or what information was not
24 provided. Further, Crow fails to specifically allege the requisite "time, place, and specific content
25 of the false representation as well as the identities of the parties to the misrepresentations."
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1 *Edwards v. Marin Park, Inc.*, 356 F.3d 1058, 1066 (9th Cir. 2004). Therefore, the court finds that
2 Crow's allegations are insufficient to support her claim for fraud.

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4 IT IS THEREFORE ORDERED that defendant's motion to dismiss (Doc. #5) is
5 GRANTED. Defendant Home Loan Center, Inc. is DISMISSED as a defendant in this action.

6 IT IS SO ORDERED.

7 DATED this 6th day of June, 2011.



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9
10 LARRY R. HICKS
UNITED STATES DISTRICT JUDGE